

SEGMENT 1



Your Role as the Examiner

Your primary function is to identify and terminate title problems, thereby greatly reducing the exposure of your underwriter to title claims. Proper title examination serves a one-two punch: it enables your underwriter to insure a low-risk policy, while simultaneously furnishing the insured party a marketable title (title reasonably free of doubt).

You will be the property expert and authority at your agency. As such, you will have a fiduciary responsibility to your agency, your underwriter, and your customer. Hence the importance of knowing what you are doing. The more you learn, the better you will perform.

Title Commitment: The Examiner's Product

A title Commitment is a document created by a title examiner, which document sets forth requirements that must be satisfied by a customer *before* an underwriter will insure that particular transaction. These requirements are referred to as conditions precedent. The Commitment also discloses exceptions to coverage that will be included in the final policy. The title Commitment consists of Schedule A, Schedule B-I, and Schedule B-II.

Continued on next page . . .

Schedule A:

Property Address: 123 Sesame Street, Birmingham, MI 48009	
1.	Effective Date: January 18, 2017, 8:00 AM
2.	Policy (or Policies) to be issued: POLICY AMOUNT
(a)	ALTA OWNER'S POLICY \$250,000.00 Proposed Insured: Tavio Ortiz and Jacki Ortiz, husband and wife
(b)	ALTA LOAN POLICY WITHOUT EXCEPTIONS \$150,000.00 Proposed Insured: John Adams Mortgage Company, its successors and/or assigns
	Proposed Borrower: Tavio Ortiz and Jacki Ortiz, husband and wife

3.	Fee Simple interest in the land described in this Commitment is owned, at the Commitment Date, by: Michael McFarland and Pamela McFarland, husband and wife
4.	The land referred to in the Commitment is located in the City of Birmingham, County of Oakland, State of Michigan and described as follows: Lot 100, Abbey Knoll Estates Subdivision, as recorded in Liber 25 of Plats, Page 36, Oakland County Records.

I will discuss the Commitment using a very traditional model. In your practice, you will encounter many creative and often overwritten and cumbersome Commitments. But there is good news: When you understand the structure and function of the Commitment, you will have little trouble in weeding out the relevant issues.

Schedule A is the first page of the Commitment. At the top of this schedule you will see a date and time, such as January 28, 2017. This date is known as the **effective date**. The effective date is disclosed by the register of deeds (ROD) office located in the county where the property is located. When the ROD receives an instrument for recording, it will assign the instrument a liber and page number. The date the instrument is recorded will be displayed directly beneath the liber and page number. When this process is completed, the instrument is said to be recorded and indexed.

The ROD receives a tremendous number of documents for recording on a daily basis. As a result, they simply can't record all instruments on the same day they are submitted. So, for example, on July 1 the ROD may have an effective date of June 1. That particular ROD is indexed through June 1 only. The effective date, in almost all counties, is **prior** to the current date. The effective date is very simple to understand and it should be explained to all parties.

Next, there is a section for listing the proposed insured parties. This section discloses the purchasing party and the amount of the purchase price, as well as the lending party and the amount of the loan.

The parties to a transaction, as well as the purchase price and loan amount, frequently change throughout the negotiation process. As these changes occur, the examiner will simply revise the Commitment to reflect the particular change.

The next section of Schedule A is quite possibly the most important section in the entire Commitment. This section discloses who the owner of the property is. This may seem an overstatement on my part, but consider this for example: Let us say the Commitment recites the owner of the property as Bob Jones, when, in fact, Bob Jones and Mike Smith are the current owners. If the property is conveyed without the signature of Mike Smith, the new owner's title will be subject to the interest of Mike Smith. Disclosing the proper state of title is, in my opinion, the most important function of the title examiner.

The last section of Schedule A consists of the legal description of the land which is the subject of the transaction. The examiner must confirm that the proper legal description is set forth. An error here could cause great havoc later in the transaction.

In summary, **Schedule A is the informative schedule.** It discloses the current effective date; the parties to the transaction; what the transaction is; the amount of the transaction; who owns the property; and the property which is the subject of the transaction. Indeed, it discloses the overall structure of the transaction.

Schedule B-I:

1. Record **warranty deed** from Michael McFarland and Pamela McFarland, husband and wife, to Tavio Ortiz and Jacki Ortiz, husband and wife.

2. Record **mortgage** from Tavio Ortiz and Jacki Ortiz, husband and wife, to John Adams Mortgage Company, in the amount of \$150,000.00.

3. Record discharge of **Mortgage** executed by Michael McFarland and Pamela McFarland, husband and wife, to ABN AMRO Mortgage Group, Inc., in the amount of \$245,000.00, dated May 14, 2005 and recorded July 17, 2005 in Liber 12345, Page 678.

4. Record discharge of the **Equity Line Mortgage** executed by Michael McFarland and Pamela McFarland, husband and wife, to Flagstar Bank, FSB, in the amount of \$30,000.00, dated September 27, 2006 and recorded November 30, 2006 in Liber 12478, Page 789.

5. Record release of **Notice of Federal Tax Lien** filed against Michael McFarland, recorded April 10, 2012 in Liber 18564, Page 36.

6. Record release of **Notice of State Tax Lien** filed against Michael McFarland and Pamela McFarland, recorded May 1, 2012 in Liber 18672, Page 421.

7. Record release of the **Notice of Judgment Lien** filed against Michael McFarland and Pamela McFarland, recorded May 10, 2015 in Liber 22101, Page 47.

9. **TAXES:** 15-22-330-034
2016 Summer Tax: \$2,957.52 Paid
2016 Winter Tax: \$1,852.28 Paid

Special Assessment: Paving - 10 parts / 7 parts paid / 3 parts DUE

Schedule B-I immediately follows Schedule A. In this Schedule, the title examiner discloses particular requirements that must be satisfied before the underwriter will issue its policy. Now I would like to pose a question: Why do we have title examiners? Is it so we can create new jobs and keep people off the streets? The obvious answer is no. The responsibility of the examiner is twofold: First, it is to protect his title agency and, by definition, the agency's underwriter, from liability. Second, it is to establish marketable title in the subject property, thereby properly serving the property owner or lender.

For the sake of clarity, I will bifurcate Schedule B-I. These segments will be labeled Schedule B-Ia and Schedule B-Ib, respectively. In Schedule B-Ia, the examiner will set forth the basic requirements that the owner or lender must fulfill. The basic requirements consist of deed and mortgage execution. For example, in a purchase transaction, the first requirement may call for the execution of a deed from the seller to the buyer. The next requirement may call for the execution of the purchase money mortgage from the buyer.

Schedule B-Ib is where the examiner cleans up the title. Common problems include federal tax liens, tax forfeitures, foreclosure proceedings, and divorce proceedings, just to name some. These problems fall within the gambit of Schedule B-Ib, because they are not formality requirements, such as the execution of a deed or mortgage; they are complex requirements that must be drafted with skill. Schedule B-Ib is where the talented examiner can display his or her skill.

My goal, as an examiner, is to create marketable title relative to the particular transaction. I create marketable title through the drafting of the Commitment. The Commitment is my instrument of communication. It is important for the reader to understand that a good title examiner is essential to a property transaction. Disclosing title problems and correcting these problems, prior to closing, will enable all parties of a transaction to get a good night sleep. The parties will not have to fear being named a defendant in a lawsuit. Now, I understand that perfect title to property can never be guaranteed. That is because there are many circumstances, such as nondisclosure, that may cause problems subsequent to the date of closing. That being said, an expert examiner will greatly reduce the element of surprise for the new home owner or lender. After all the requirements of Schedule B-I have been complied with, the parties may schedule a closing.

Schedule B-II:

1. ANY DISCREPANCIES OR CONFLICTS IN BOUNDARY LINES, ANY SHORTAGES IN AREA, OR ANY ENCROACHMENT OR OVERLAPPING OF IMPROVEMENTS.
2. ANY FACTS, RIGHTS, INTERESTS OR CLAIMS WHICH ARE NOT SHOWN BY THE PUBLIC RECORD BUT WHICH COULD BE ASCERTAINED BY AN ACCURATE SURVEY OF THE LAND OR BY MAKING INQUIRY OF PERSON IN POSSESSION THEREOF.
3. EASEMENTS, LIENS OR ENCUMBRANCES OR CLAIMS THEREOF, WHICH ARE NOT SHOWN BY THE PUBLIC RECORD.
4. ANY LIEN OR RIGHT TO LIEN FOR SERVICES, LABOR OR MATERIAL IMPOSED BY LAW AND NOT SHOWN BY THE PUBLIC RECORD.

8. **Building and use restrictions** recorded in Liber 852, Page 415, which are not accompanied by a right of reverter, but deleting covenants, conditions or restrictions indicating a preference, limitation or discrimination based on race, color religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 usc 3604 (c).
9. **Easement** for public utilities over the rear 6 feet of the land as shown on the plat.

Schedule B-II sets forth the list of exceptions to coverage that will appear on the final policy. Schedule B-II is broken down into two sections: (1) the general exceptions section, and (2) the specific exceptions section.

The general exceptions section is a list of exceptions based on industry standards and practice. These exceptions include, among others, the parties in possession exception and the matters of survey exception, just to name two. These are the boilerplate exceptions.

The specific exceptions are the exceptions that are particular to the subject parcel. These exceptions may include, as an example, recorded easements, recorded building and use restrictions, platted easements, and recorded leasehold interests.

At the end of the day, if the purchaser and/or lender are content with the list of general and specific exceptions, as shown on the Commitment, the closing may be scheduled. If, however, the purchaser or lender, or an attorney representing a particular party, object to one or more of the specific exceptions, and you can expect an objection, the closing will have to be postponed until these issues can be resolved. Challenges to Schedule B-II are common, and this makes good sense. The client, or attorney, will desire as few exceptions as possible. This is common sense: The fewer the exceptions, the greater the coverage afforded by the policy.

Specific exceptions can only be removed by agency counsel or the underwriter, as any removal will further expose the underwriter to potential liability.

Legal descriptions (land within a defined perimeter)

As the examiner, you are responsible for laying out the proper legal description on Schedule A. The good news is that legal descriptions will only come in one of three forms: 1) a Lot within a platted Subdivision, 2) a Unit within a Condominium development, or 3) unplatted land (described with a metes and bounds (acreage) description).

Platted land:

Click on this link [Plat](#)

In reviewing the plat, you want to verify the full and proper name of the plat, as well as the liber and page #'s the plat is recorded under.

I will use Lot 50 as an example.

The legal description for our example would read:

Lot 50, Rolling Meadow Estates No. 2, as recorded in Liber 80 of Plats, Pages 1 and 2, Washtenaw County Records.

Condominium land:

Click on this link [Master Deed](#)

In reviewing the Master Deed, you want to verify the full and proper Condominium name, the plan number, and the liber and page # the Master Deed is recorded under.

I will use Unit 3 as an example.

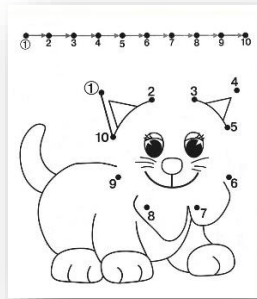
The legal description for our example would read:

Unit 3, Riverwood, according to the Master Deed recorded in Liber 3835, Page 85, and all Amendments thereto, Washtenaw County Records, and designated as Washtenaw County Condominium Subdivision Plan No. 308, with rights in general common elements and limited common elements, as set forth in said Master Deed and as described in Act 59, P.A. 1978, as amended.

Unplatted land:

Click on this link [Metes & Bounds](#)

Unplatted land is described with a perimeter description (similar to a dot to dot layout that we all enjoyed as kids).



The metes and bounds description will make more sense upon completion of the legal description section below.

Learning to draw

When the property is not part of a platted Subdivision or a unit within a Condominium, you may be required to draw the perimeter description of the property. This is the so-called metes and bounds description. Well, do not fear, for I have designed the program below just for you.

Tools: examiners must have a scale and compass to complete this step.

Print multiple copies of the following, as it will be used to draw the legal descriptions.

Click on this link [Mapping Paper](#)

With scale, compass, and paper in hand, let us begin.

Click on this link [How to Draw a Legal Description](#)

Estates in Land

Understanding how property is owned is critical for the title examiner. Well, do not fear, for I have designed the program below just for you.

Click on this link [**Understanding the Estates**](#)

END SEGMENT 1